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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92063032
Party	Defendant Squeeze Juice Works, LLC
Correspondence Address	WILLIAM R BREES MAXEY LAW OFFICES PLLC 100 2ND AVE SOUTH STE 401N ST PETERSBURG, FL 33701 UNITED STATES lpg@maxeyiplaw.com, w.brees@maxeyiplaw.com, b.maxey@maxeyiplaw.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	William R. Brees
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Date	04/28/2016
Attachments	462.007_Registrant's_Motion_for_Leave_to_File_Second_Amended_Answer_04282016.pdf(225729 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Boston Juicery, LLC,

Petitioner,

v.

Squeeze Juice Works, LLC,

Registrant.

Cancellation No. 92063032

Mark:

SQUEEZE JUICE WORKS Word Mark
(Registration No. 4,726,293)

**REGISTRANT’S MOTION FOR LEAVE TO FILE ITS SECOND AMENDED ANSWER
TO PETITION FOR CANCELLATION**

Registrant Squeeze Juice Works, LLC (hereinafter "Registrant"), hereby moves the Trademark Trial and Appeal Board (hereinafter "Board"), pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, for leave to file its SECOND AMENDED ANSWER TO PETITION FOR CANCELLATION (hereinafter "Second Amended Answer"), a copy of which is attached hereto as Exhibit A. As recommended in the Trademark Trial and Appeal Board Manual of Procedure¹, a red-lined copy showing the proposed changes is also attached hereto as Exhibit B. The Second Amended Answer maintains the responses to allegations from the original Answer, but includes amendments to Registrant’s Affirmative Defenses.

I. STATEMENT OF FACTS

a. Procedural Overview

On January 25, 2016, Petitioner Boston Juicery, LLC (hereinafter "Petitioner"), filed its Petition for Cancellation of the SQUEEZE JUICE WORKS word mark with the Board. The Board issued its Notice and Trial Dates on January 27, 2015. Registrant filed its Answer to the

¹ TBMP § 507.01.

Petition for Cancellation on March 07, 2016. On March 25, 2016, Petitioner filed its Motion to Strike Registrant's Affirmative Defenses and to Suspend Proceedings. On April 15, 2016, Registrant filed its First Amended Answer. The Board issued the Order granting Petitioner's Motion to Strike Registrant's Affirmative Defenses on April 15, 2016.

II. MEMORANDUM OF LAW

Pursuant to 37 C.F.R. §2.115, amendments to pleadings in a cancellation proceeding may be made in the same manner and extent as in that of a civil action in a United States district court. Pursuant to Federal Rule of Civil Procedure 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave." "The court should freely give leave when justice so requires."² Pursuant to Trademark Trial and Appeal Board Manual of Procedure, "[a] signed copy of the proposed amended pleading should accompany a motion for leave to amend a pleading."³ As to the timing for filing a motion for leave to amend, "long and unexplained delay in filing a motion to amend a pleading may render the amendment untimely."⁴

Registrant submits that the timing of its filing of its Motion for Leave to File its Second Amended Answer to Petition for Cancellation does not constitute a long and unexplained delay. The interests of justice will be served by having all allegations and affirmative defenses properly before the Board as set forth in Registrant's Second Amended Answer. The amendments are narrowly tailored to reflect the issues per the Board's Order of April 15, 2016. Petitioner will not suffer undue prejudice by virtue of the Board's allowance of the Second Amended Answer.

Accordingly, in the interest of justice, the Board should grant Registrant's Motion for Leave to File its Second Amended Answer to Petition for Cancellation.

² Fed. R. Civ. P. 15(a)(2).

³ TBMP §507.01.

⁴ TBMP §507.02(a).

III. CONCLUSION

For the foregoing reasons, Registrant respectfully requests the Board to grant it leave to file its Second Amended Answer

Dated: April 28, 2016

/William R. Brees/

William R. Brees

Brittany J. Maxey

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Counsel for Registrant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing REGISTRANT'S
MOTION FOR LEAVE TO FILE ITS SECOND AMENDED ANSWER TO PETITION FOR
CANCELLATION has been served via Email on April 28, 2016, to Counsel for Petitioner:

Aaron Y Silverstein
Saunders & Silverstein LLP
14 Cedar Street, Suite 224
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Dated: April 28, 2016

/William R. Brees/
William R. Brees
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Counsel for Registrant

Exhibit A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Boston Juicery, LLC,

Petitioner,

v.

Squeeze Juice Works, LLC,

Registrant.

Cancellation No. 92063032

Mark:

SQUEEZE JUICE WORKS Word Mark
(Registration No. 4,726,293)

SECOND AMENDED ANSWER TO PETITION FOR CANCELLATION

The following is the Second Amended Answer of Registrant Squeeze Juice Works, LLC (hereinafter "Registrant"), a Florida Limited Liability Company, with an address of 675 30th Avenue North, Suite 101, St. Petersburg, Florida 33704, owner of Federal Trademark Registration No. 4,726,293 ("Subject Registration") for the word mark SQUEEZE JUICE WORKS (hereinafter "Registrant's Mark"), by and through its Counsel, Maxey Law Offices, PLLC, to the Petition for Cancellation filed on January 25, 2016 by Boston Juicery, LLC (hereinafter "Petitioner"), and assigned Cancellation No. 92063032.

THE PARTIES

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 1 of the Petition for Cancellation. Since Registrant can neither admit nor deny the paragraph as written, Registrant must deny.
2. Admitted.
3. Denied.
4. Denied.

5. Denied.
6. Denied.
7. Registrant admits that on February 28, 2014, Registrant filed a trademark application for the mark SQUEEZE JUICE WORKS. Otherwise Registrant denies the allegations contained in paragraph 7.
8. Admitted.
9. Admitted.
10. Admitted.
11. Registrant admits that Registrant's Letter stated "Our client recognizes that Boston Juicery was in operation prior to the filing of the Federal Trademark Application that matured into the Federal Registration for the SQUEEZE JUICE WORKS® [sic]." Otherwise Registrant denies the allegations contained in paragraph 11.

COUNT I

12. Registrant repeats and realleges each and every response set forth in Paragraphs 1 through 11.
13. Denied.
14. Admitted.
15. Registrant is without knowledge or information sufficient to form a belief as to the truth of allegations regarding Petitioner's goods and services contained in paragraph 15 of the Petition for Cancellation. Since Registrant can neither admit nor deny the paragraph as written, Registrant must deny.
16. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Unclean Hands)

17. Petitioner does not have a United States Federal Trademark Registration for the term
“SQUEEZE”.
18. Petitioner has never had a United States Federal Trademark Registration for the term
“SQUEEZE”.
19. Petitioner does not have a United States Federal Trademark Registration for the term
“SQUEEZE JUICE BAR”.
20. Petitioner has never had a United States Federal Trademark Registration for the term
“SQUEEZE JUICE BAR”.
21. Prior to the filing of the Application that matured into the Subject Registration,
Petitioner used the registered trademark symbol in connection with the term
“SQUEEZE”.
22. Prior to the filing of the Application that matured into the Subject Registration,
Petitioner used the registered trademark symbol in connection with the term
“SQUEEZE JUICE BAR”.
23. After the filing of the Application that matured into the Subject Registration,
Petitioner used the registered trademark symbol in connection with the term
“SQUEEZE”.
24. After the filing of the Application that matured into the Subject Registration,
Petitioner used the registered trademark symbol in connection with the term
“SQUEEZE JUICE BAR”.

25. After the registration date of the Subject Registration, Petitioner used the registered trademark symbol in connection with the term “SQUEEZE”.
26. After the registration date of the Subject Registration, Petitioner used the registered trademark symbol in connection with the term “SQUEEZE JUICE BAR”.
27. Petitioner’s use of the registered trademark symbol in connection with the terms “SQUEEZE” and “SQUEEZE JUICE BAR” was deliberate and intended to deceive or mislead the public.
28. Petitioner was advised by Registrant on August 10, 2015, in the form of Correspondence, that Petitioner was falsely marking the term “SQUEEZE” as a Federally Registered Trademark by including the ® symbol with said term on its website, social media accounts, and on packaging.
29. Petitioner continued to falsely mark the term “SQUEEZE” after receipt and review of said Correspondence.
30. Petitioner notified Registrant that it intended to continue the false marking of the term “SQUEEZE” after notification of the fraudulent nature of the false marking.
31. Petitioner’s use of the registered trademark symbol in connection with the terms “SQUEEZE” and “SQUEEZE JUICE BAR” constitutes fraud.
32. Petitioner lost any proprietary right it might have had in the terms “SQUEEZE” and “SQUEEZE JUICE BAR” as a result of its fraud.
33. Petitioner’s use of the registered trademark symbol in connection with the term “SQUEEZE” was dishonest.
34. Petitioner’s use of the registered trademark symbol in connection with the term “SQUEEZE JUICE BAR” was dishonest.

35. Accordingly, Petitioner comes before the Board with unclean hands, having performed acts condemned by honest and reasonable persons, and should therefore be denied any equitable relief sought by Petitioner in the instant action.

36. Petitioner's claims are barred in whole or in part by the doctrine of unclean hands.

SECOND AFFIRMATIVE DEFENSE
(Abandonment)

37. Petitioner bases its Petition for Cancellation on its use of the term "SQUEEZE JUICE BAR".

38. Petitioner has ceased use of the term "SQUEEZE JUICE BAR" in connection with Goods and Services similar to those listed in the Subject Registration without the intent to resume such use.

39. Petitioner has replaced its use of the term "SQUEEZE JUICE BAR" with "SQUEEZE JUICE COMPANY".

40. Petitioner has an intent not to resume use of the term "SQUEEZE JUICE BAR" in connection with Goods and Services similar to those listed in the Subject Registration, coupled with non-use of the term "SQUEEZE JUICE BAR".

41. Petitioner cannot tack its use of the term "SQUEEZE JUICE COMPANY" onto its use of the term "SQUEEZE JUICE BAR".

42. Petitioner has abandoned any rights it might have had in the term "SQUEEZE JUICE BAR".

WHEREFORE, Registrant prays that the Trademark Trial and Appeal Board deny the Cancellation and permit continued registration of Registrant's Mark in Federal Trademark Registration No. 4,726,293 in the United States Patent and Trademark Office.

Dated: April 28, 2016

Respectfully Submitted,

/William R. Brees/

William R. Brees, Esquire (Fla. Bar No. 98886)

Brittany J. Maxey, Esquire (Fla. Bar No. 44586)

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Counsel for Registrant

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Boston Juicery, LLC,

Petitioner,

v.

Squeeze Juice Works, LLC,

Registrant.

Cancellation No. 92063032

Mark:

SQUEEZE JUICE WORKS Word Mark
(Registration No. 4,726,293)

~~FIRST~~SECOND AMENDED ANSWER TO PETITION FOR CANCELLATION

The following is the Second Amended Answer of Registrant Squeeze Juice Works, LLC (hereinafter "Registrant"), a Florida Limited Liability Company, with an address of 675 30th Avenue North, Suite 101, St. Petersburg, Florida 33704, owner of Federal Trademark Registration No. 4,726,293 ("Subject Registration") for the word mark SQUEEZE JUICE WORKS (hereinafter "Registrant's Mark"), by and through its Counsel, Maxey Law Offices, PLLC, to the Petition for Cancellation filed on January 25, 2016 by Boston Juicery, LLC (hereinafter "Petitioner"), and assigned Cancellation No. 92063032.

THE PARTIES

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 1 of the Petition for Cancellation. Since Registrant can neither admit nor deny the paragraph as written, Registrant must deny.
2. Admitted.
3. Denied.
4. Denied.

5. Denied.
6. Denied.
7. Registrant admits that on February 28, 2014, Registrant filed a trademark application for the mark SQUEEZE JUICE WORKS. Otherwise Registrant denies the allegations contained in paragraph 7.
8. Admitted.
9. Admitted.
10. Admitted.
11. Registrant admits that Registrant's Letter stated "Our client recognizes that Boston Juicery was in operation prior to the filing of the Federal Trademark Application that matured into the Federal Registration for the SQUEEZE JUICE WORKS® [sic]." Otherwise Registrant denies the allegations contained in paragraph 11.

COUNT I

12. Registrant repeats and realleges each and every response set forth in Paragraphs 1 through 11.
13. Denied.
14. Admitted.
15. Registrant is without knowledge or information sufficient to form a belief as to the truth of allegations regarding Petitioner's goods and services contained in paragraph 15 of the Petition for Cancellation. Since Registrant can neither admit nor deny the paragraph as written, Registrant must deny.
16. Denied.

~~FURTHERMORE, Registrant sets for the following in support of its~~

~~position:~~ **AFFIRMATIVE DEFENSES**

FIRST AFFIRMATIVE DEFENSE

(Unclean Hands)

17. Petitioner does not have a United States Federal Trademark Registration for the term “SQUEEZE”.
18. Petitioner has never had a United States Federal Trademark Registration for the term “SQUEEZE”.
19. Petitioner does not have a United States Federal Trademark Registration for the term “SQUEEZE JUICE BAR”.
20. Petitioner has never had a United States Federal Trademark Registration for the term “SQUEEZE JUICE BAR”.
21. Prior to the filing of the Application that matured into the Subject Registration, Petitioner used the registered trademark symbol in connection with the term “SQUEEZE”.
22. Prior to the filing of the Application that matured into the Subject Registration, Petitioner used the registered trademark symbol in connection with the term “SQUEEZE JUICE BAR”.
23. After the filing of the Application that matured into the Subject Registration, Petitioner used the registered trademark symbol in connection with the term “SQUEEZE”.
24. After the filing of the Application that matured into the Subject Registration, Petitioner used the registered trademark symbol in connection with the term “SQUEEZE JUICE BAR”.

25. After the registration date of the Subject Registration, Petitioner used the registered trademark symbol in connection with the term “SQUEEZE”.

26. After the registration date of the Subject Registration, Petitioner used the registered trademark symbol in connection with the term “SQUEEZE JUICE BAR”.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

~~(Failure to State a Claim)~~

~~27. Petitioner does not have a proprietary right in the Mark being asserted.~~

~~28. Petitioner did not use the term “SQUEEZE JUICE BAR” in the United States in connection with Goods or Services similar to those in the Subject Registration prior to Registrant’s first use of Registrant’s Mark in the United States.~~

~~29. Because Petitioner did not use the term “SQUEEZE JUICE BAR” prior to Registrant’s first use of Registrant’s Mark, Petitioner cannot show priority over Registrant.~~

~~30. Because a valid ground does not exist for the cancellation of the Subject Registration, the Petition for Cancellation fails to state a claim upon which relief can be granted.~~

SECOND AFFIRMATIVE DEFENSE

~~(Lack of Standing—No Prior Use)~~

~~31. Petitioner did not use the term “SQUEEZE JUICE BAR” in connection with Goods or Services similar to those in the Subject Registration prior to Registrant’s first use of Registrant’s Mark.~~

~~32. Petitioner did not use the term “SQUEEZE JUICE BAR” in commerce in connection with Goods or Services similar to those in the Subject Registration prior to Registrant’s first use of Registrant’s Mark.~~

~~33. Without priority of use of a mark confusingly similar to Registrant's Mark, Petitioner has no basis for a personal stake in the outcome of the Proceeding.~~

~~34. Because Petitioner does not have a personal interest in the continued registration of the Subject Registration, Petitioner lacks standing to file the Petition for Cancellation.~~

THIRD AFFIRMATIVE DEFENSE
(Lack of Standing—False Advertising)

~~35. Registrant repeats and realleges each and every allegation set forth in Paragraphs 17 through 26.~~

~~36. Petitioner's use of the registered trademark symbol in connection with the terms "SQUEEZE" and "SQUEEZE JUICE BAR" constitutes false advertising.~~

~~37. Petitioner lost any proprietary right it might have had in the terms "SQUEEZE" and "SQUEEZE JUICE BAR" as a result of its false advertising.~~

FOURTH AFFIRMATIVE DEFENSE
(Lack of Standing—Unfair Competition)

~~38. Registrant repeats and realleges each and every allegation set forth in Paragraphs 17 through 26.~~

~~39. Petitioner's use of the registered trademark symbol in connection with the terms "SQUEEZE" and "SQUEEZE JUICE BAR" constitutes unfair competition.~~

~~40. Petitioner lost any proprietary right it might have had in the terms "SQUEEZE" and "SQUEEZE JUICE BAR" as a result of its unfair competition.~~

FIFTH AFFIRMATIVE DEFENSE
(Lack of Standing—Deceptive Trade Practice)

~~41. Registrant repeats and realleges each and every allegation set forth in Paragraphs 17 through 26.~~

~~42. Petitioner's use of the registered trademark symbol in connection with the terms "SQUEEZE" and "SQUEEZE JUICE BAR" constitutes deceptive trade practices.~~

~~43. Petitioner lost any proprietary right it might have had in the terms "SQUEEZE" and "SQUEEZE JUICE BAR" as a result of its deceptive trade practices.~~

SIXTH AFFIRMATIVE DEFENSE
(Lack of Standing—Fraud)

~~44. Registrant repeats and realleges each and every allegation set forth in Paragraphs 17 through 26.~~

~~45.~~27. Petitioner's use of the registered trademark symbol in connection with the terms "SQUEEZE" and "SQUEEZE JUICE BAR" was deliberate and intended to deceive or mislead the public.

~~46.~~28. Petitioner was advised by Registrant on August 10, 2015, in the form of Correspondence, that Petitioner was falsely marking the term "SQUEEZE" as a Federally Registered Trademark by including the ® symbol with said term on its website, social media accounts, and on packaging.

~~47.~~29. Petitioner continued to falsely mark the term "SQUEEZE" after receipt and review of said Correspondence.

~~48.~~30. Petitioner notified Registrant that it intended to continue the false marking of the term "SQUEEZE" after notification of the fraudulent nature of the false marking.

~~49.~~31. Petitioner's use of the registered trademark symbol in connection with the terms "SQUEEZE" and "SQUEEZE JUICE BAR" constitutes fraud.

~~50.~~32. Petitioner lost any proprietary right it might have had in the terms "SQUEEZE" and "SQUEEZE JUICE BAR" as a result of its fraud.

SEVENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

~~51. Registrant repeats and realleges each and every allegation set forth in Paragraphs 17 through 26.~~

~~52.33.~~ Petitioner's use of the registered trademark symbol in connection with the term "SQUEEZE" was dishonest.

~~53.34.~~ Petitioner's use of the registered trademark symbol in connection with the term "SQUEEZE JUICE BAR" was dishonest.

~~54. Petitioner's use of the registered trademark symbol in connection with the term "SQUEEZE" was fraudulent.~~

~~55. Petitioner's use of the registered trademark symbol in connection with the term "SQUEEZE JUICE BAR" was fraudulent.~~

~~35. Accordingly, Petitioner comes before the Board with unclean hands, having performed acts condemned by honest and reasonable persons, and should therefore be denied any equitable relief sought by Petitioner in the instant action.~~

~~56.36.~~ Petitioner's claims are barred in whole or in part by the doctrine of unclean hands.

EIGHTSECOND AFFIRMATIVE DEFENSE
(Abandonment)

~~57.37.~~ Petitioner bases its Petition for Cancellation on its use of the term "SQUEEZE JUICE BAR".

~~58.38.~~ Petitioner has ceased use of the term “SQUEEZE JUICE BAR” in connection with Goods and Services similar to those listed in the Subject Registration without the intent to resume such use.

~~59.39.~~ Petitioner has replaced its use of the term “SQUEEZE JUICE BAR” with “SQUEEZE JUICE COMPANY”.

~~60.40.~~ Petitioner ~~did~~has an intent not ~~intend~~ to resume use of the term “SQUEEZE JUICE BAR” in connection with Goods and Services similar to those listed in the Subject Registration. , coupled with non-use of the term “SQUEEZE JUICE BAR”.

~~61.41.~~ Petitioner cannot tack its use of the term “SQUEEZE JUICE COMPANY” onto its use of the term “SQUEEZE JUICE BAR”.

~~62.42.~~ Petitioner has abandoned any rights it might have had in the term “SQUEEZE JUICE BAR”.

WHEREFORE, Registrant prays that the Trademark Trial and Appeal Board deny the Cancellation and permit continued registration of Registrant’s Mark in Federal Trademark Registration No. 4,726,293 in the United States Patent and Trademark Office.

Dated: April ~~15~~28, 2016

Respectfully Submitted,

/William R. Brees/
William R. Brees, Esquire (Fla. Bar No. 98886)
Brittany J. Maxey, Esquire (Fla. Bar No. 44586)
MAXEY LAW OFFICES, PLLC
100 Second Avenue South, Suite 401 North
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Email: lpg@maxeyiplaw.com,
w.brees@maxeyiplaw.com
b.maxey@maxeyiplaw.com
Counsel for Registrant

CERTIFICATE OF SERVICE

~~I HEREBY CERTIFY that a true and correct copy of the foregoing **FIRST AMENDED**~~
~~ANSWER TO PETITION FOR CANCELLATION has been served via First Class U.S. Mail on~~
~~April 15, 2016, to counsel for Petitioner:~~

Aaron Y Silverstein
Saunders & Silverstein LLP
14 Cedar Street, Suite 224
Amesbury, MA 01913-1831
Phone: 978-463-9100
~~trademarks@massiplaw.com, asilverstein@massiplaw.com~~

~~Dated: April 15, 2016~~

~~_____~~

~~_____/William R. Brees/_____~~
~~William R. Brees~~
~~Brittany J. Maxey_____~~
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~~100 Second Avenue South, Suite 401 North~~
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~~Counsel for Registrant~~